IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.1366/Mum/2021
(A.Y. 2016-17)

ISS Facility Services India Private Limited, The Qube, B 401/404 and A402 Behind Taj Stats, Village Marol Sahar Road, Andheri (East) Mumbai – 400059	Vs.	The Assistant Commissioner of Income Circle 2(1)(1), Room No. 561, 5th Floor, Aayakar Bhavan, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCI3815M		
Appellant	..	Respondent

Appellant by :	Nikhil Tiwari
Respondent by :	Anil Sant

Date of Hearing	13.10.2023
Date of Pronouncement	29.11.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assesse is directed against the order passed by the National e-Assessment Centre in pursuance of the Directions issued by the DRP-I Mumbai for A.Y. 2016-17. The assessee has raised the following grounds before us:

*"**General Ground***

1. *erred in assessing the total Income of the Appellant at Rs.32,42,76,200/ as against the them returned Income of Rs.26,28,92,520,*

Transfer Pricing Grounds

2. *erred in making a transfer pricing adjustment of Rs 5,42,46,778 to the total income of the Appellant on the premise that the international transactions of*

global corporate client management ('GCCM) services availed by the Appellant from its associated enterprise ('AE') were not at arm's length;

Reference made to the Transfer Pricing Officer

3. *erred in referring the Appellant's case to the Learned Transfer Pricing Officer ("TPO") under Section 92CA(1) of the Act, without satisfying the conditions specified therein,*

Rejecting the benchmarking analysis undertaken by the Appellant/selection of tested party

4. *erred in rejecting the transfer pricing analysis undertaken by the Appellant by rejecting the selection of AE as the tested party, without appreciating that the analysis was in accordance with the provisions of the Act read with the Income Tax Rules, 1962 ("the Rules") and incorrectly holding that the Appellant' s international transactions of GCCM service availed from its AE were not at arm's length;*

Determining ALP of GCCM services availed by the Appellant from its AE at 50% of the GCCM fees paid to AE

5. *erred in determining the ALP in respect to the international transaction of GCCM services availed by the Appellant from its AE at 50% of its value.*

Scope of TPO

6. *erred in not appreciating the commercial rational/ expediency of the Appellant for availing of GCCM services, and thereby exceeding jurisdiction by considering benefit/ availing of services as a condition for benchmarking the international transactions of GCCM service,*

Availing of services/ benefit test/ commercial rational

7. *erred in holding that the Appellant has failed to demonstrate that it has received GCCM services, without appreciating relevant documentary evidence to substantiate the receipt of GCCM service by the Appellant from its AE;*
8. *erred in holding that the Appellant has failed to demonstrate that it has benefited from the GCCM services availed by it, by disregarding the submissions/emails/ correspondences filed by the Appellant, without providing any cogent reasons for the same,*
9. *erred in holding that GCCM services availed by the Appellant are in the nature of shareholder/ duplicative/incidental services; without appreciating the business and commercial expediency of the impugned international transactions:*

Use of method for benchmarking the international transaction

10. *erred in not selecting one of the prescribed methods under Rule 100 of the Income Tax Rules, 1962 ('the Rules") for benchmarking the*

international transactions of management and GCCM services availed by the Appellant from its AE,

Corporate-tax ground-

11. That on the facts and in the circumstances of the case & in law, the AO has erred in confirming the disallowance of the Travelling Expense of Rs.54,18,179/- without appreciating the material on record and also by overlooking the facts and circumstances of the case. The said expense claim may be please allowed

12. that on the facts and in the circumstances of the case & in law, the AO has erred in confirming the disallowance of miscellaneous expenses to the tune of Rs.42,96,808/- without appreciating the material on record and also by overlooking the facts and circumstances of the case. The said miscellaneous expense of Rs.42,96,808 was an erroneous entry which was subsequently reversed in the same period. However, the learned AO has merely ignored the reversal and concluded the expenditure to be capital in nature thereby disallowing the same. As such, the disallowance of miscellaneous expenses to the tune of Rs. 42,96,808/- may please be allowed.

13. erred in invoking the provisions of Section 14A of the Act read with Rule SD of the Rules even though no exempt income was earned by the Appellant during the subject AY;

Short grant of TDS Credit tax

14. erred in not to grant credit for TDS tax of various subsidiary companies which got merged with the Appellant and whose income is included in the Appellant's income while offering tax for the current year;

Penalty Proceedings

15. erred in initiating penalty proceedings under Section 274 r.w.s. 271(1)(c) of the Act.

Each of the above ground is independent and without prejudice to one another. The Appellant craves leave to add, to alter, to amend or to delete any or all of the above grounds of appeal, at or prior to hearing of the appeal so as to enable the Income Tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays that appropriate relief be granted based on the said grounds of appeal and the facts and circumstances of the case."

2. Fact in brief is that assesse (ISS Facility Services India Private Limited or ISS India) is wholly owned subsidiary of ISS Global A/S, which in turn is a downstream subsidiary of ISS World Services A/S (ISS A/S) Denmark. The assessee has entered into services agreement

in relation to which the assessee has made payment to its AE for availing of Global Corporate Clients Management Services (GCC Services). Accordingly, assessee has paid GCC Fees (Global Corporate Client Management Services to its associate enterprise). The associate enterprise provide global regional management support to local management. Further fact of the case are discussed while adjudicating the ground of appeal filed by the assessee.

Ground No. 1:

3. This ground of appeal is not pressed by the assessee therefore this ground of appeal of the assessee is dismissed as not pressed.

Ground No. 2 to 10:

4. These grounds are pertained to the issue of payment of Global Corporate Client Management Fees by the assessee to its associate enterprise. As per the arrangement associate enterprise provides services in relation to support for regional relationship management with client, delivery of critical environment and energy management and delivery of health, safety and environment management, delivery of management information, delivery of HR management and delivery of operation management etc. The cost incurred by ISS World for rendering the said services is allocated to ISS facility entities based on the turnover as the allocation key. ISS India Provide such fees to ISS A/S at cost plus 6.5% mark up. During the proceedings before the TPO the assessee submitted the detail of various services received along with the documentary evidences along with benefits received by the assessee. The assessee submitted before the TPO that to maintained the brand and quality of service globally it received functional and operational support from its associate enterprise in order to carry out its business efficiently. In consideration of GCC services from its associate enterprise ISS A/s in respect of corporate client agreement the assessee company

agreed to pay to its such AE a GCC Management Service fees based on cost for principle with 6.5 mark up. However, the TPO has not agreed with the submission of the assessee. The TPO commented that the services received by the assessee towards GCC charges were not specific in nature for which any separate charge need to be paid by the assessee to its associate enterprise. The TPO also stated that various e-mail/evidences produced did not demonstrate the rendering of any service by the associate enterprise to the assessee for which any payment need to be made by an independent party in an arm's length scenario. The TPO also stated that the cost allocation was not reliable and the documents furnished by the assessee did not demonstrate the rendering of any service or the benefit received for which such payment was made. The TPO referred two of the agreement of the assessee made with Barclay and Citi Group in respect of the GCC fees which was recovered from the third party clients. The TPO has allowed the claim of GCC fees to the extent of Rs.12,94,05,791/- which was charged from the third parties and disallowed the remaining amount of Rs.10,84,93,555/- claimed as GCC cost by the assessee and added back as income.

5. The assesse has filed objection against the aforesaid adjustment made by the TPO before the ld. DRP. Following the directions of the DRP for earlier years, the ld. DRP has restricted the disallowance to the extent of 50% of the amount received by the AE with reference to services rendered under Global Corporate Client Management agreement.

6. Heard both the sides and perused the material on record. During the course of appellate proceedings before us the ld. Counsel at the outset submitted that similar issue on identical fact in the case of the assessee itself for assessment year 2013-14 has been adjudicated by

the ITAT, Mumbai vide ITA No. 411/Mum/2018 on 03.01.2022 in favour of the assessee.

On the other hand, the ld. D.R relied on the order of lower authorities.

7. With the assistance of the ld. representative we have perused the decision of coordinate bench for assessment year 2013-14 in the case of the assessee as referred above. The relevant extract of the decision is reproduced as under:

> *"3.9 As regards the international transaction of Payment of Global Client Management Fee, it is also evident that TPO in subsequent assessment years has partially accepted the assessee's submission of rendition of service by AE and made ad-hoc adjustment without applying any prescribed method under section 92C(1) of the Act. Further, it is also unrebutted that receipt of service from AE has resulted in growth of assessee's business as the revenue and profitability has increased over the years. The Revenue could not controvert any of the facts nor could place any material on record to the contrary to suggest that Revenue is aggrieved by part relief granted by the DRP. We are s in agreement with the findings of co-ordinate bench of the Tribunal in case of M/s Lintas India Pvt. Ltd. (supra), which in turn has followed the decision of Hon'ble Jurisdictional High Court in the case of CIT v. Johnson & Johnson Ltd. in ITA No. 1030 of 2014. The relevant extract of the order in the case of M/s. Lintas India Pvt. Ltd. reads as under:*
>
> > *"8. We have heard the rival submissions and perused the materials available on record. It would be pertinent to address the preliminary issue raised by the ld. AR before us that the ld. TPO had failed to apply any method while determining the ALP at nil for GIS services; for determining the ALP of payment made towards MSF services by accepting 20% thereon on adhoc basis and accepting 50% for MNC services on adhocbasis thereon. We find that provisions of Section 92C(1)of the Act mandates adoption of one of the prescribed method mentioned therein for determining the ALP of international transactions. It is not in dispute that the disallowances/adjustments made by the ld. TPO to ALP were made without following any of the prescribed methods as per law.*
> >
> > *8.1. We hold that once a reference is received by the ld. TPO u/s.92CA(1) of the Act from the ld. AO, the ld. TPO is required to determine the ALP of the international transaction as per the provisions contained in Section 92C and 92CA of the Act read with relevant rules thereon. From the conjoint reading of the relevant sections and the relevant rules, we find that the duty of the ld. TPO is restricted only to the determination of the arm's length price of an international transaction between two related parties by applying any of the methods prescribed u/s.92C of the Act read with rule 10B of the rules. Thus, there is no provision made in the*

statute empowering ld. TPO for determining the ALP on a particular international transaction on an estimation basis / adhoc basis.

8.2. We find that the Hon'ble Jurisdictional High Court in the case of CIT vs. Johnson & Johnson Limited in ITA No.1030 of 2014 dated 07/03/2017 wherein it was held as under:-

"4.Regarding question (D) :

(a) The respondent assessee paid to its Associated Enterprises (AE), technical know how royalty of 2%. The Transfer Pricing Officer (TPO) by order dated 24th March, 2005 restricted the technical know how royalty paid by the respondent assessee to its AE at 1% instead of 2%, as claimed.In terms of the determination dated 24th March, 2005 of the TPO on the above issue amongst others, an assessment order dated 28th March, 2005 for the subject Assessment Year was passed by Assessing Officer under Section 143(3) of the Act.

(b) Being aggrieved with the order dated 28th March, 2005 of the Assessing Officer, the respondent assessee preferred an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 22ndMarch,2007, the appeal of the respondent assessee on the issue of royalty payable on technical know how, allowed the appeal. It inter alia held that restricting the royalty paid on account of technical know how to 1% was arbitrary and adhoc. Inasmuch as, there were no reasons justifying the restriction of the technical know how royalty paid by the respondent assessee to its AE at 1%. Moreover, it also records the fact that the TPO did not determine the ALP of the technical know how royalty by adopting any of the methods prescribed under Section 92C of the Act.

(c) Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. By the impugned order dated 20th August, 2013 the Tribunal dismissed the Revenue's appeal inter alia upholding the order of the CIT(A).

(d) We find that the impugned order of the Tribunal upholding the order of the CIT(A) in the present facts cannot be found fault with. The TPO is mandated by law to determine the ALP by following one of the methods prescribed in Section 92C of the Act read with Rule 10B of the Income Tax Rules. However, the aforesaid exercise of determining the ALP in respect of the royalty payable for technical know how has not been carried out as required under the Act. Further, as held by the CIT(A) and upheld by the impugned order of the Tribunal, the TPO has given no reasons justifying the technical know how royalty paid by the Assessing Officer to its Associated Enterprise being restricted to 1% instead of 2%, as claimed by the respondent assessee. This determination of ALP of technical know how royalty by the TPO was adhoc and arbitrary as held by the CIT(A) and the Tribunal.

(e) In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained."

> *8.3. Respectfully following the aforesaid decision of Hon'ble Jurisdictional High Court, we have no hesitation in directing the ld. TPO to delete adjustment made to ALP in respect of aforesaid three services viz., GIS services (Rs.62,95,226/-), MSF Services (Rs.7,88,90,157/-) and MNC Services (Rs.19,29,008/-). Accordingly, grounds raised by the assessee are allowed on this technical aspect and grounds raised by the revenue are dismissed on this technical aspect."*
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> *In view of the above we hold that as no method under section 92C(1) of the Act was followed by TPO/ DRP for upholding partial adjustment in respect of international transaction pertaining to Payment of Global Client Management Fee and same was done merely on ad-hoc basis, TPO is directed to delete the transfer pricing adjustment of Rs. 3,66,71,462/- in respect of Payment of Global Client Management Fee. Accordingly, transfer pricing grounds no. 7 to 11 raised in the appeal are allowed."*

Since, during the year under consideration also the TPO/DRP has not followed any method u/s 92(1) of the Act for making adjustment in respect of international transaction pertaining to payment of Global Client Management Fees and similar to the earlier year the same was done merely on adhoc basis, therefore, following the decision of coordinate bench as referred above the TPO is directed to delete the impugned transfer pricing adjustment of Rs.5,42,46,778/- in respect of payment Global Client Management Fees. Therefore, these ground of appeal of the assessee are allowed.

Ground No. 13:

8. This ground of appeal is not pressed therefore the same stand dismissed.

Ground No. 11: Disallowance of Travelling Expenses of Rs.54,18,179/-:

9. During the course of assessment the A.O noticed that assesse has debited amount of Rs.6,57,52,039/- under the head travelling and conveyance expenses. The AO on analysis of excel format of ledger A/c of travelling and conveyance observed duplication in the claim of expenses under the head transportation. Therefore, AO has disallowed

20% of travelling and conveyance expenses amounting to Rs.1,31,50,408/- and added back to the total income of the assessee.

10. The assesse filed objection before the ld. DRP. The ld. DRP directed the assessing officer to work out the exact amount for which wrongful deduction of expenses have been claimed under the head transportation and disallow the specific amount.

11. During the course of appellate proceedings before us the ld. Counsel submitted that there is no duplication in the claim of the assessee and both the expenses were correctly claimed under the specific head of travelling and transportation expenses.

On the other hand, the ld. D.R supported the order of lower authorities.

12. Heard both the sides and perused the material on record. During the year under consideration the assessee has claimed travelling expenses to the amount of Rs.6,57,52,039/- and also claimed expenditure of Rs. 2,04,84,293/- under the transportation head. In the profit and loss account both the items have been separately debited and assessee claimed that it had not claimed same expenditure twice and both the expenditure were claimed under the respective head with different nature and purpose. After considering the material placed on record we consider that the assessing officer has only mentioned at page no. 23 to 83 of the assessment order in respect of duplication of expenses under the head transportation without giving any reference of such expenses already claimed by the assessee under the head travelling expenses. Therefore, we direct the AO to decide this issue afresh after verification/examination of the specific supporting detail maintained by the assesse in respect of claim of expenditure separately made in travelling and transportation head. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 12. Disallowance of miscellaneous expenses:

13. During the course of assessment the AO noticed that assessee has claimed miscellaneous expenses to the amount of Rs.6,10,64,234/- in the profit and loss account. The assessing officer after analyses of the material submitted by the assessee observed that assesse has claimed expenses of capital nature under the head miscellaneous expenses. Therefore, 20% miscellaneous expenses to the amount of Rs.1,22,12,846/-was disallowed and added to the total income of the assessee.

14. The assesse filed objection before the DRP. The DRP has directed the assessing officer to work out the exact sum related to capital expenditure and allow the depreciation upon the same if it is allowable.

15. Heard both the sides and perused the material on record. We find that assessing officer has made adhoc disallowance without specifically referring the exact amount of capital expenditure debited to the profit and loss account. Therefore, we restore this issue to the file of the assessing officer for deciding afresh to determine the exact amount of expenditure of the nature of capital expenditure, after verification of relevant documentary evidences maintained by the assessee. Therefore, this ground of appeal is allowed for statistical purposes.

Ground No. 14: Short grant of TDS credit tax:

16. This ground of appeal of the assessee is restored to the file of the assessing officer for deciding after verification of the relevant supporting material to be furnished by the assessee. Therefore, this ground of appeal is allowed for statistical purpose.

Ground No. 15: Initiating of Penalty:

17. This ground of appeal is not pressed therefore the same stand dismissed.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.11.2023

Sd/-	Sd/-
(Aby T Varkey) Judicial Member	(Amarjit Singh) Accountant Member

Place: Mumbai
Date 29.11.2023
Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.